

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ELEONOR JULIAN-FERNANDEZ, GAUDENCIO BERREDO, JR. Y CLET,
JOSELITO JIMENEZ Y MORTEL (ACQUITTED), JERIC JIMENEZ Y
MORTEL (AC...**

G.R. Nos. 143850-53. December 18, 2001

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

This is an appeal from the decision of 13 March 2000 of the Regional Trial Court of Makati City, Branch 143,[1] convicting accused-appellants Eleonor Julian-Fernandez (ELEONOR) and Gaudencio Berredo y Clet, Jr. (GAUDENCIO) for the violation of the following sections of R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended:

(1)

Section 15, Article III, for illegal sale of Methamphetamine Hydrochloride (shabu), a regulated drug,

(2) Section 16, Article III for illegal possession of Methamphetamine Hydrochloride, and

(3)

Section 16, Article III in relation to Section 27, Article IV, for engaging in pot session.

Originally, four criminal cases involving the violation of R.A. No. 6425, as amended, allegedly committed on 4 September 1997, were filed against ELEONOR and GAUDENCIO, to wit:

(1) Criminal Case No. 97-1375 which was filed against ELEONOR only, for violation of Section 16, Article III of R.A. No. 6425,[2] as amended, based on an information[3] indicting her for possessing and controlling white crystalline substance contained in six (6) heat-sealed transparent plastic bags with a weight of 281.5 grams and found positive to the test for Methamphetamine Hydrochloride, without the lawful authority to possess or use said regulated drug.

(2) Criminal Case No. 97-1376 against ELEONOR and GAUDENCIO for violation of Section 15, Article III of R.A. 6425, as amended, under an information charging them for conspiring and confederating with one another in the sale, delivery and distribution of Methamphetamine Hydrochloride weighing 0.8 gram approximately in consideration of P1,000.00 without the necessary license, prescription or authority.[4]

(3) Criminal Case No. 97-1377 against GAUDENCIO only for violation of Section 16, Article III of R. A. No. 6425, as amended, under an information which is similarly worded as the indictment against ELEONOR for the same offense in Criminal Case No. 97-1375,[5] which information was later amended to include

ELEONOR for having conspired with and aided GAUDENCIO in possessing or using the regulated drug without the authority and license to do so.[6]

(4) Criminal Case No. 97-1378 against ELEONOR, GAUDENCIO, Joselito Jimenez (Joselito), Jeric Jimenez (Jeric) and Reamy Soriano (Reamy) for violation of Section 16, Article III in relation to Section 27, Article IV[7] of R.A. 6425, as amended, under an information charging them for mutually aiding and conspiring with one another and together with Rodel Delos Reyes (whose present whereabouts are unknown) in the use of Methamphetamine Hydrochloride in a social gathering (pot session) without the corresponding license or prescription.[8]

The cases were consolidated and jointly tried. ELEONOR and GAUDENCIO were arraigned on 20 October 1997, while Joselito, Jeric and Reamy were arraigned on 27 October 1997. Each pleaded not guilty.

The first witness for the prosecution was Police Inspector Vicente Raquion. He testified that he was assigned to the Office of the Chief of Police, Makati Police Station. On 3 September 1997, he headed a team of policemen which would conduct a buy-bust operation for the purpose of apprehending ELEONOR alias Mother Lily and GAUDENCIO alias Jun. The group arrived at about 12:00 midnight of the same date at the Makati Townhouse Hotel located at Gil Puyat, Makati, where ELEONOR and GAUDENCIO were allegedly staying. Since he had already been previously introduced to ELEONOR by his "DPA" (Deep Penetrating Agent), he would pose as the poseur buyer. After arriving at the townhouse, Raquion posted himself at the visitor's lounge of the third floor. A few minutes later, ELEONOR came out of Rm. 4-B. After Eleonor recognized him, she approached him. They talked for a while before he offered to buy a gram of shabu. He handed over to her two (2) P500 bills which his team had earlier marked for identification.[9] ELEONOR told him to wait for her. She went back to Rm. 4-B. A few minutes later, she returned and handed Raquion a transparent plastic sachet containing the shabu. Raquion thereafter showed her boodle money (cut newspaper with a genuine P1000 on top thereof) saying that he wanted to buy more. She replied that there are more shabu in the possession of Jun. She then invited Raquion to join them in the other room for a pot session. He went with her to Rm. 4-B. Then, they proceeded to Rm. 3-B where Raquion saw in plain view five persons engaged in a pot session as four of them, while seated on a bench, were sniffing and passing to each other an improvised tooter or burner. One person was separated from the group but he was attending to several packets of suspected shabu placed on a table.[10] On the witness stand, Raquion identified and pointed to accused Joselito Jimenez, Jeric Jimenez and Reamy Soriano as the three of the four persons engaged in the shabu session, and accused-appellant GAUDENCIO as the person separated from the group but attending to shabu.[11]

Raquion further testified that when he observed that what was going on was a pot session, he signaled to his team members, using his badge beeper. His team members then rushed into the room, showed their respective police IDs and effected the arrest. They then brought ELEONOR and the rest to the police station for investigation[12] and later to Camp Crame for a drug test.[13]

Raquion also stated that the items confiscated as a result of the operation were listed and then signed by ELEONOR and GAUDENCIO.[14] Thereafter, a letter requesting for laboratory test of some of the items confiscated was prepared and sent to the PNP Crime Laboratory.[15]

The letter-request for laboratory test grouped the items confiscated into:

A) -

a piece of brown envelop which contained a piece of plastic sachet with suspected Methamphetamine Hydrochloride weighing approximately 1.2 grams (subject evidence of the buy-bust operation);

B) -

one (1) blue purse branded "GIANNI VALENTINO" with six (6) pieces of heat-sealed plastic sachets containing suspected Methamphetamine Hydrochloride, approximately weighing a total of 286.1 grams;

C) -

a brown envelope with one improvised glass tooter and one (1) piece of aluminum strip both with suspected Methamphetamine Hydrochloride residues; and

D) -

a brown envelope with one (1) improvised burner and one (1) disposable lighter.

The second prosecution witness was P/Sr. Insp. Julita de Villa, Forensic Chemist of the PNP Crime Laboratory. She confirmed the letter-request for laboratory test and recounted the physical, chemical and chromatographic examinations she conducted on the items she received. She likewise confirmed the results of her examinations, which were incorporated in her Physical Sciences Report No. D-394-97.[16] She observed that except for the contents of group D, all the items yielded positive for Methamphetamine Hydrochloride.[17]

The third witness for the prosecution was SPO2 William B. Masiglat. He declared that at the time the buy-bust operation was conducted, he worked with the Southern District Drug Enforcement Office at Fort Bonifacio, Makati City.[18] He investigated ELEONOR and her co-accused after they were arrested. He was the one who personally prepared the request for the laboratory testing of and made the markings on the items confiscated from ELEONOR and company.[19] He was also the one who placed the markings on the two (2) P500 bills used for the buy-bust operation.[20]

The fourth witness for the Prosecution was P/Supt. Gaudencio Cordora, Jr. He was the project director of Batong Buhay, an operation initiated by the Drug Enforcement Station at Fort Bonifacio in August 1997, after receiving reports and information from an informant about the rampant drug activities in the area. Target of this project was the group of Mother Lily. He dispatched Raquion and his team to conduct the buy-bust operation on 4 September 1997.[21]

For its part, the defense presented as witnesses accused Jeric Jimenez, Joselito Jimenez, GAUDENCIO, ELEONOR, Police Inspector Ophelia Cruz Sotelo, accused Reamy Soriano and Marilou Carandang.

Jeric testified that on 3 September 1997, at around 11 o'clock in the evening, he was chatting with ELEONOR, GAUDENCIO and one Dennis Bermo at Rm. 4-B of the Makati Townhouse Hotel when they heard a knock at the door followed by a voice "Ma'am telephone!" The voice repeated the statement and when Jeric was about to open the door, men whom he later found out as police officers Raquion, Casem, Camacho and Carreon barged into the room. They ransacked the place and searched Jeric's belongings until, to his surprise, they showed him that they found shabu in his things.[22]

Jeric further testified that he was tested for drug and found negative for it.[23] He was billeted at Rm. 4-B by ELEONOR and GAUDENCIO to run errands for them.

Joselito testified that on 4 September 1997, he was sleeping at Rm. 4-B of the Makati Townhouse Hotel when police officers Acuin, Cases and Camacho, who were then in civilian clothes, entered the room and thereafter conducted a search for shabu. Acuin poked his gun at him while they were searching but they did not find shabu. With him in the room at the time was Reamy Soriano, the girlfriend of his brother Jeric. Joselito and Reamy were brought by the police to Rm. 3-B. In the room, Joselito saw Jeric who was with ELEONOR and GAUDENCIO. They were sitting while the policemen continued their search for shabu.[24]

Joselito further declared that he was likewise tested for drugs but the results were negative.[25]

GAUDENCIO testified that he was staying with ELEONOR at Rm. 3-B of the Makati Townhouse Hotel. At 1:00 A.M. of 4 September 1997, Dennis Bermo, their policeman friend from the Pasay Police Station, visited them. They conversed and then Dennis laid down on the bed. Suddenly, they heard somebody knock at the door and announce that they have a telephone call. They answered to wait a minute. After two or three minutes, there was another knock. When ELEONOR unlocked the door to finally see who was knocking, the door was suddenly forcefully opened. GAUDENCIO claimed that they tried to block and stop the person behind the door from pushing it. At this point, Bermo stood up from the bed, pulled out his service firearm and shouted, "What is that? I am a policeman!" But several persons already rushed inside the room and took Bermo's firearm. GAUDENCIO ran outside to seek the help of the security guard. However, one person, who turned out to be Raquion, followed him, poked his gun at him and told him not to run or he would shoot him. He was brought by Raquion back to the room where he found their things in complete disarray. He saw Dennis and ELEONOR seated but already handcuffed. [26]

GAUDENCIO denied that a buy-bust operation was conducted and that he was attending to several packets with white crystalline substance in them. It was at the police station when the police showed him a blue bag, containing the packets with white crystalline substance. The bag belonged to Bermo. GAUDENCIO claimed that they were detained at the police station for four days, and on the last day the policemen instructed him to sign a list of the items allegedly confiscated from them. He then observed that Bermo was taken with them to the police station, but that he was released the next day.[27]

ELEONOR testified that she and GAUDENCIO were live-in partners. They were temporarily billeted at the Makati Townhouse Hotel, at Rm. 3-B in the first week of September 1997 since the house of GAUDENCIO's mother where they were residing was undergoing renovation. Her best friend of seven years, Pasay City police officer Dennis Bermo, suggested the Makati Townhouse Hotel as possible temporary residence. At about 1:00 A.M. of 4 September 1997, Bermo paid them a visit. She noticed that he was carrying a blue bag. They then invited Jeric Jimenez who was staying at Rm. 4-B for some snacks. Her son was also with her at the time. Fifteen minutes later, they heard a knock at the door and a voice saying that there is a telephone call. On the second time they heard the knock and the information about the telephone call, ELEONOR opened the door a little and peeped. She felt the door being pushed wide open. GAUDENCIO and Bermo then helped her push back the door but guns were poked at them. Four men, identifying themselves as policemen, entered the room and told them to sit down on the bed. ELEONOR and her company were handcuffed, despite Bermo's announcement that he was a policeman.[28]

According to ELEONOR, the policemen searched the room but found only jewelry and money. No document or search warrant was presented to her and her friends. They were thereafter brought to the police station where they were told that the policemen found shabu in their room. They also met for the first time Joselito Jimenez and Reamy Soriano who were brought later to the station. As for Bermo, ELEONOR claimed that while he was brought with them to the station, he was not incarcerated and he never heard of him since then. She admitted to sniffing shabu occasionally but not on the day that she was arrested.[29]

P/Insp. Ophelia Cruz Sotelo, forensic analyst at the PNP Crime Laboratory, WPD, UN, confirmed her Physical Science Report No. DT-732-97 to DT -736-97,[30] which shows that Joselito Jimenez and Jeric Jimenez were found negative in the drug test she conducted. Her examinations on the urine samples of ELEONOR, GAUDENCIO and Reamy Soriano revealed that they were positive for Methamphetamine Hydrochloride.[31]

Accused Reamy Soriano testified that she visited her boyfriend Jeric Jimenez at Rm. 4-B at the Makati Townhouse Hotel on 3 September 1997. At about 1:00 A.M. of 4 September 1997, she was in the room with Joselito. As Jeric promised her that he would bring her home later, she waited for him as he was just at Rm. 3-B.

Suddenly, several men who identified themselves as police officers barged into the room, leveled their guns at her and Joselito, and searched and frisked their bodies. They were brought by the policemen to Rm. 3-B where they saw Jeric, ELEONOR, GAUDENCIO and Bermo in handcuffs. Thereafter, they were taken to the police station.[32]

Marilou Carandang was presented to prove that ELEONOR was financially capable to pay the hotel bills because of the monetary support given to her by her former Japanese husband.[33]

After due assessment of the evidence presented, the trial court gave full faith and credit to the testimonies of the prosecution witnesses. It found them to be "clear, certain and left no room for doubt," and consistent with the physical evidence. They could not be "overturned" by the bare denials of the defense witnesses especially in the light of the latter's failure to show ill-motive on the part of the prosecution witnesses. Thus, the trial court upheld in favor of the policemen the presumption of regularity in the performance of official functions.

The trial court then concluded that the prosecution convincingly established the guilt of the accused beyond reasonable doubt.

The trial court, however, acquitted Joselito and Jeric Jimenez because the drug tests found them negative for Methamphetamine Hydrochloride.

In its challenged decision the trial court decreed:

All the foregoing considered, the court finds accused Eleonor Julian-Fernandez and Gaudencio Berredo guilty beyond reasonable doubt of violation of Section 15, Article III of Republic Act No. 6425 and sentences them to a prison term of four (4) months, one (1) day of Arresto Mayor as minimum to two (2) years, four (4) months of prision correccional as maximum.

The Court likewise finds them guilty beyond reasonable doubt of illegal possession of 281.5 grams of shabu. The amount of shabu exceeding 200 grams; the court sentences them to life imprisonment and a fine of PhP1,000,000.00 each.

With respect to the pot-session charge, the court finds accused Gaudencio Berredo, Julian-Fernandez and Reamy Soriano guilty beyond reasonable doubt they having, among other things, been tested positive for shabu. For this offense they are meted the penalty of 4 months, 1 day to 2 years, 4 months. The other accused, Joselito and Jeric Jimenez, are acquitted; the result of their test being negative.

Let the shabu and paraphernalia for its use be disposed of in the manner provided by law.[34]

ELEONOR and GAUDENCIO moved for reconsideration of the decision. Save for changing the portion of the decision with respect to the imposition of life imprisonment to reclusion perpetua, the trial court denied the motion for reconsideration.[35]

ELEONOR and GAUDENCIO seasonably appealed from the decision of the trial court.

In their Appellants' Brief, ELEONOR and GAUDENCIO assert that the physical evidence offered by the prosecution are inadmissible for they were procured without the requisite search and seizure warrants. Based on the cross-examination of Raquion, operation Batong Buhay commenced on 14 April 1997. From that time to the day the buy-bust operation was conducted on 3 September 1997, the intervening period of twenty (20) days would have provided the police officers, particularly Raquion, sufficient time to secure the requisite search warrant. But they did not. Raquion's excuse that ELEONOR and GAUDENCIO were always transferring from one place to another such that the police operatives could not get their exact address did not justify the failure to comply with the constitutional mandate on the procurement of a search warrant.

ELEONOR and GAUDENCIO also maintain that since Section 16 of R.A. 6425 declares that the possession, use, sale and delivery of the Methamphetamine Hydrochloride, a regulated drug, is illegal if the possessor, user, or seller is not authorized or licensed, the allegation in the information that they have no license or authority to sell or possess the drug is a negative allegation and the onus of proving it rests on the prosecution. The prosecution failed to prove it.

Further, ELEONOR and GAUDENCIO claim that no quantitative examination was conducted, only qualitative testing. In other words, the white crystalline substance allegedly confiscated from them was not determined to be pure Methamphetamine Hydrochloride. They merely tested positive after a portion thereof was subjected to the qualitative test. Hence, the penalty imposed has no quantitative basis as set forth in R.A. 6425, as amended.

Finally, ELEONOR and GAUDENCIO contend that no buy-bust was conducted, but a frame-up instigated by Police Officer Bermo who brought the bag, which contained the white crystalline substance. The police forcibly entered Rms. 3-B and 4-B without the necessary warrant to do so a few minutes after Bermo's arrival. He was brought to the police station but he was not charged with any crime. Testimonies of the defense witnesses as to his presence and arrest remained un rebutted. ELEONOR and GAUDENCIO then conclude that the incident was merely "a set-up to appease the public in the clamor of police failure to curtail illegal drug activities." [37]

For these reasons, ELEONOR and GAUDENCIO insist that they should be acquitted based on reasonable doubt.

In the Appellee's Brief, the People through the Office of the Solicitor General (OSG) argues to uphold the conviction of ELEONOR and GAUDENCIO. It submits that there was a legitimate buy-bust operation and the police officers caught ELEONOR and GAUDENCIO in flagrante delicto. Consequently, the warrantless arrest effected on the persons of ELEONOR and GAUDENCIO was lawful. Hence, the warrantless search conducted was but an incident to such lawful arrest, and likewise lawful.

Additionally, the OSG disputes ELEONOR and GAUDENCIO's theory on negative averments and asserts that the burden was on them to present evidence that they have authority or license to possess, sell and deliver the regulated drug Methamphetamine Hydrochloride. It also found quaint the argument of ELEONOR and GAUDENCIO that the laboratory tests were not performed on the entire amount of the drug found in the plastic sachets. It opined that a sample taken from a package is logically presumed to be representative of the entire contents of the package unless proven otherwise by ELEONOR and GAUDENCIO themselves.

Finally, the OSG claims that the defense of "frame-up" loses credence in the face of evidence that overwhelmingly establish the guilt of ELEONOR and GAUDENCIO.

Confronted with the conflicting versions of the prosecution and defense at the core of which is the issue of credibility of witnesses, we defer to the determination of the trial court on the matter. It is settled that, as a general rule, appellate courts will not interfere with the judgment of trial courts on the credibility of witnesses, unless there appears on record some facts or circumstances of weight and influence which the trial court has overlooked or the significance of which it has misapprehended or misinterpreted. The reason for this is that the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. [38] We perceive none of the exceptions in these cases.

We affirm, therefore, the credence and faith lent by the trial court to the testimonies of the prosecution witnesses that there was a buy-bust operation. Principally anchored on Raquion's testimony and corroborated by prosecution witnesses, police officers Masiglat and Cordora, Jr., the buy-bust operation was the culmination of weeks of covert surveillance codenamed Batong Buhay on the activities of ELEONOR and GAUDENCIO concerning the regulated drug Methamphetamine Hydrochloride. Thus, in the early morning of 4 September 1997, Raquion and

his team conducted the buy-bust. Raquion himself posed as the poseur-buyer, received the .08 grams of shabu and handed over to ELEONOR the two (2) pieces of P500 bills as consideration for the sale or transaction. Later, he saw GAUDENCIO attending to several packets of Methamphetamine Hydrochloride.

A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing lawbreakers in the execution of their criminal plan. It is a procedure or operation sanctioned by law and which has consistently proved itself to be an effective method of apprehending drug peddlers. Unless there is a clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimony on the operation deserved full faith and credit.[39]

As the trial court found, the testimonies on the buy-bust operation are supported by the expert testimony of Forensic Chemist, Sr. Insp. Julita de Villa, and the physical evidence consisting of the seized plastic packets of white crystalline substance which yielded positive to Methamphetamine Hydrochloride and the marked P500 bills recovered from ELEONOR and GAUDENCIO after their arrest. The commission of the offense of illegal sale of prohibited drugs requires merely the consummation of the selling transaction.[40] Material to a prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.[41]

We also affirm the trial court's finding that ELEONOR and GAUDENCIO offered no evidence that the police officers were improperly or maliciously motivated. It was only in their Appellants' Brief that they belatedly and brazenly described the incident as "a set-up to appease the public in the clamor of police failure to curtail illegal drug activities." With nothing to substantiate that malicious accusation, credence shall be given to the narration of the incident by the prosecution witnesses as they are police officers who are presumed to have performed their duties in a regular manner. In other words, in the absence of proof of motive to falsely impute such a serious crime, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over the self-serving and uncorroborated claim of having been framed.[42]

Besides, the claim of frame-up, like alibi, is a defense that has been invariably viewed by us with disfavor for it can easily be concocted but difficult to prove, and is a common and standard defense ploy in most prosecutions arising from violations of the Dangerous Drugs Act.[43]

With the legitimacy of the buy-bust having been indubitably established, the warrantless arrest, search and seizure effected under the circumstances described was permissible. In *People v. Chua Ho San*,[44] we pointed out, thus:

This interdiction against warrantless searches and seizures, however, is not absolute and such warrantless searches and seizures have long been deemed permissible by jurisprudence in instances of (1) search of moving vehicles, (2) seizure in plain view, (3) customs searches, waiver or consented searches, (5) stop and frisk situations (Terry search), and search incidental to a lawful arrest. The last includes a valid warrantless arrest, for, while as a rule, an arrest is considered legitimate is effected with a valid warrant of arrest, the Rules of Court recognize permissible warrantless arrest, to wit: (1) arrest in flagrante delicto, (2) arrest effected in hot pursuit, and (3) arrest of escaped prisoners.

There is as well no merit to the claim of ELEONOR and GAUDENCIO that the prosecution failed to prove that they have no license or authority to sell and distribute Methamphetamine Hydrochloride. The general rule that if a criminal charge is predicated on a negative allegation, or that a negative averment is an essential element of a crime, the prosecution has the burden to prove the charge. However, this rule is not without an exception. Thus, we have held:

Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within

the knowledge of the accused, the onus probandi rests upon him. Stated otherwise, it is not incumbent upon the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendant's knowledge or control. For example, where a charge is made that a defendant carried on a certain business without a license (as in the case at bar, where the accused is charged with the sale of a regulated drug without authority), the fact that he has a license is a matter which is peculiarity within his knowledge and he must establish that fact or suffer conviction.[45]

In the instant case, the negative averment that ELEONOR and GAUDENCIO had no license or authority to sell and possess Methamphetamine Hydrochloride, a regulated drug, has been fairly indicated by these facts as proven by the testimonies of the police officers, to wit: (a) ELEONOR sold and delivered to Raquion the drug, and accepted the buy-bust money, not in a pharmacy or hospital but in a hotel, at Makati, at the unholy hour of 1:00 A.M.; and (b) GAUDENCIO was caught tending to several plastic packets of the regulated drug not in a pharmacy, drug or chemistry laboratory or hospital but at Rm. 3-B of a hotel at the "unholy hour" of a few minutes after 1:00 A.M. With these established facts the burden shifted to ELEONOR and GAUDENCIO. They could have easily disproved the damning circumstances by presenting a copy of the license or authority to sell the regulated drug or any other document evidencing authority to possess it, if they had any. They had nothing to offer.

We find no persuasive value to the contention that no quantitative examination was conducted to establish the purity of the Methamphetamine Hydrochloride sold and/or possessed by ELEONOR and GAUDENCIO. Forensic Chemist and expert witness Julita de Villa found that except for the contents of group D, all the items which she subjected to laboratory examination, yielded positive for Methamphetamine Hydrochloride.[46] In short, all the plastic packets contained the regulated drug. It has already been settled that a sample taken from one (1) of the package is logically presumed to be representative of the entire contents of the package unless proven otherwise by ELEONOR and GAUDENCIO themselves. Therefore, a positive result for the presence of drugs is indicative of the total number of kilograms of drugs in the plastic package from which the sample was taken.[47]

The Court is not unaware of the fact that the test conducted for the presence of Methamphetamine Hydrochloride is a relatively simple test, which can be performed by an average or regular chemistry graduate. There is no evidence in this case to show that the positive results for the presence of Methamphetamine Hydrochloride are erroneous. Thus, in conjunction with the admission by the defense of the expertise and authority of forensic chemist Julita de Villa and at the undisputed presumption that official duty has been regularly performed, said results adequately establish that the white crystalline substance found in seven (7) plastic packets seized from ELEONOR and GAUDENCIO during the buy-bust operation was indeed Methamphetamine Hydrochloride.[48]

Therefore, we affirm the conviction of GAUDENCIO and ELEONOR in Criminal Cases Nos. 97-1376, 97-1377 and 97-1378. We uphold the trial court's finding of conspiracy, which we find to be overwhelmingly established by the following circumstances: (a) ELEONOR and GAUDENCIO were staying together at the Makati Townhouse; (b) ELEONOR was caught in flagrante delicto selling the regulated drug; (c) ELEONOR invited witness Raquion to a pot session and Raquion saw Jeric, Reamy, and Joselito sniffing and passing to one another paraphernalia later found positive to the test for Methamphetamine Hydrochloride; (d) GAUDENCIO was tending to several packets with white crystalline substance which tested positive for Methamphetamine Hydrochloride; (e) these activities took place in the middle of the night not in a hospital or laboratory which could have justified the use, control or possession of the drug; and (f) the results of the laboratory examination on the urine samples of ELEONOR and GAUDENCIO yielded positive to the test of the drug. The rule is well established that in conspiracy, the act of one is the act of all, and each one of the conspirators is liable for the crimes committed by the other conspirators.[49]

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered AFFIRMING in toto the challenged decision of 13 March 2000 of the Regional Trial Court of Makati City, Branch 143, finding accused-appellants ELEONOR JULIAN-FERNANDEZ and GAUDENCIO BERREDO, JR. y CLET guilty beyond reasonable doubt in Criminal Case No. 97-1376, for violation of Section 15, Article III of R. A. No. 6425, as amended, and sentencing each of them to suffer a prison term of four (4) months and one (1) day of arresto mayor as minimum to two (2) years, four (4) months of prision correccional as maximum; in Criminal Case No. 97-1377, for violation of Section 16, Article III of R. A. 6425, as amended, and sentencing each of them to suffer the penalty of reclusion perpetua and pay a fine of P1,000,000; and in Criminal Case No. 97-1378 for violation of Section 16, Article III in relation to Section 27, Article IV of R. A. 6425, as amended and sentencing each of them to suffer a prison penalty ranging from four (4) months and one (1) day of arresto mayor minimum to two (2) years and four (4) months of prision correccional as maximum.

Costs against accused-appellants.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Per Judge Salvador Abad Santos, Acting Presiding Judge.

[2] Section 16. Possession or Use of Regulated Drugs.- The penalty of reclusion perpetua to death and a fine ranging from five thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

[3] Rollo, 12.

[4] Id., 14.

[5] Id., 15.

[6] Original Record (OR), 57.

[7] Section 27. Criminal Liability of Possessor or User of Dangerous Drugs During Social Gatherings. - The maximum of the penalties provided for in Section 8, Article II and Section 16, Article III of this Act shall be imposed upon any person found possessing or using any dangerous drug during a party or at a social gathering or in a group of at least five persons possessing or using such drugs.

[8] Rollo, 17.

[9] TSN, 5 November 1997, 3-12.

[10] TSN, 5 November 1997, 32, 13-19.

[11] Id., 20-21.

[12] Id., 22.

[13] Id., 25.

[14] Id., 23; See OR, 161, marked as Exh. "6."

[15] Id., 24-25; See Letter-Request for Laboratory Test dated 4 September 1997 at OR, 174; Xerox copy thereof

marked as Exh. "B."

[16] OR, 173; Exh "I."

[17] TSN, 21 November 1997, 8-9.

[18] TSN, 28 November 1997, 9.

[19] Id., 6-9.

[20] Id., 12.

[21] TSN, 16 January 1998, 6-8.

[22] TSN, 20 March 1998, 4-7.

[23] Id., See Physical Science Report No. DT-732-97 to DT -736-97, OR, 329 marked as Exh. "1."

[24] TSN, 1 April 1998, 4-9

[25] Physical Science Report, supra note 23.

[26] TSN, 29 April 1998, 4-10.

[27] Id., 11-20.

[28] TSN, 27 May 1998, 4-11; 15.

[29] Id., 14-20.

[30] OR, 329 marked as Exh. "1;" Supra note 23.

[31] TSN, 5 June 1998 6, 22.

[32] TSN, 8 July 1998, 3-6.

[33] TSN, 15 July 1998.

[34] Rollo, 40-41.

[35] OR, 467.

[37]

Rollo, 98; Brief for the Accused-Appellants.

[38]

People v. Alao, 322 SCRA 380 [2000], citing People v. Dismuke, 234 SCRA 51 [1994].

[39]

People v. Ramon Chua Uy, 327 SCRA 335 [2000].

[40]

People v. Magno, 296 SCRA 443 [1998].

[41]

People v. Boco, 309 SCRA 42 [1999]; People v. Chen Tiz Chang, 325 SCRA 776 [2000].

[42]

People v. Betty Cuba, 336 SCRA 389 [2000].

[43]

Ibid.; See also People v. Sy Bing Yok, 309 SCRA 28 [1999]; People v. Barita, 325 SCRA 22 [2000].

[44]

308 SCRA 432 [1999].

[45]

People v. Manalo, 230 SCRA 309 [1994].

[46]

TSN, 21 November 1997, 8-9.

[47]

People v. Tang Wai Lan, 276 SCRA 24 [1997].

[48]

Supra note 47; See also People v. Ramon Chua Uy, supra note 38.

[49]

People v. Figueroa, G.R. No. 134056, 6 July 2000.

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